

S.B. CIVIL MISC. APPEAL NO. 59/2004

Nethi Ram

Vs.

Smt. Prabhu Devi and ors.

DATE OF ORDER : 2.3.2006

HON'BLE MR. JUSTICE PRAKASH TATIA

Mr. C.S. Kotwani, for the appellant

Mr. M.C. Bhishnoi, for the respondents No. 1 to 4

Mr. Jagdish Vyas, for the respondent No.5.

REPORTABLE

Heard learned counsel for the parties.

This appeal has been filed by the owner of the vehicle. He challenged the award dated 3.7.2003, by which the Motor Accident Claims Tribunal awarded the compensation of Rs.2,43,000/- to the claimant on account of loss which claimants suffered due to death of Jagdish, who was Taxi driver and was hit by Tractor No. RJ-16R-6195.

According to the learned counsel for the appellant, the driver of the vehicle was the owner himself. He had learner's driving licence. Though the driver of the vehicle had learner's licence, the Tribunal exonerated the insurer from the liability on the ground that the driver did not comply with the condition of the learner's driving licence, despite the fact that no such defence was taken by the respondent - insurance company.

Learned counsel for the appellant submits that the appellant had learner's licence to drive the vehicle and therefore, he was duly

licenced as like person who has regular licence to drive the vehicle. Otherwise also, because of non-observation of any condition, if it was there but has not contributed to the accident in any manner, than also the insurance company cannot claim any immunity.

It is also submitted that since the appellant was the person having the driving licence to drive the vehicle, therefore, appellant was not required to prove that he complied with the condition of driving licence in a case where there is no allegation of violation of conditions of licence. At the most, the respondent Insurance Company could have taken specific defence about the violation of the specific condition which could have been met with by the appellant before the Tribunal, but since that specific defence was not taken before the Tribunal, therefore, the Tribunal committed serious serror of law in exonerating the Insurer. Had opportunity, would have been given to the appellant to meet with the objection, the appellant would have lead evidence to show that condition was not violated by him. Without making aware the respondent owner and claimant about the defence of the Insurance Company no plea could have been entertained by the Tribunal.

Learned counsel for the respondent No.5 Insurance Company vehemently submitted that even in view of the judgment of the Hon'ble Supreme Court delivered in the case of Swarn Singh, it is clear that validly framed Rules becomes part of the statute and such rules are, therefore, required to be read as part of main enactment. Rules

provides for compliance of certain conditions by the driver having learner's licence. Therefore, requirement of compliance of conditions of learner's driving licence is mandatory and required to be followed strictly. It is also well settled principle of law that for the interpretation of the statute, an attempt must be made to give effect to all provisions under the Rules. No provision should be considered as superfluous. The Rule 3 clearly provides that while driving a vehicle by the person holding learner licence, he should keep one person fully licenced to drive the vehicle with him and he should keep marked "L" on the vehicle.

I considered the submissions of the learned counsel for the parties and perused the facts of the case. It is not in dispute that owner of the vehicle - appellant himself was driver of the vehicle at the time of accident. He was having the learner's licence. The Hon'ble Apex Court in Swarn Singh's case held that person holding learner's licence, thus, would also come within the purview of "duly licenced person", as learner's licence is also granted in terms of the provisions of the Act and the Rules framed thereunder. In view of the above, the appellant was duly licenced person to drive the vehicle.

So far as condition mentioned in the learner's licence reminding the driver of the vehicle that he should keep one duly licenced person with him and should keep the word "L" on the vehicle is statutory requirements under Rule 3 of the Central Rules framed under the Act of

1988. Whether those rules were violated by the driving licence holder is a question of fact and on the basis of which if Insurance Company had intention to take defence, that defence should have been taken specifically by mentioning the exact violation of the rule upon which owner of the vehicle could have contested the issue. It will be worthwhile to mention here that there is requirement of putting word "L" over the vehicle when the vehicle is driven by a driver holding learner licence then how that non-mentioning of word "L" has contributed in the accident is required to be proved as a matter of fact. The violation of condition of licence, which has no nexus with the accident, may be for any other consequence like fine or punishment as provided by law, but cannot be used to avoid liability arising out of accident. In the like manner whether any other person was with the driver of the vehicle at the time of accident, could have been subject matter of enquiry only, if a specific defence would have been taken by the insurance company. When there is no such defence was taken by the insurer there was no reason for owner of the vehicle to narrate each and every fact that he has complied with each and every condition of the learner licence.

In view of the above the tribunal has committed error of law in drawing inference of non-compliance of the rules and conditions of the licence by the driver of the vehicle because of the reason that that was not the issue raised by the insurer.

In view of the above, the appeal of the appellant is allowed. It is held that the respondent-Insurance Company is liable to pay the compensation amount to the claimants.

(PRAKASH TATIA),J.

Rm/